



**WRITTEN STATEMENT OF**  
**ALAN KORN, J.D.,**  
**DIRECTOR OF PUBLIC POLICY &**  
**GENERAL COUNSEL,**  
**SAFE KIDS WORLDWIDE**  
**ON**  
**PRODUCT SAFETY FOR CHILDREN**

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**Subcommittee Hearing**

**House Energy and Commerce**  
**Subcommittee on Commerce, Trade and Consumer Protection**

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My name is Alan Korn, and I am the Director of Public Policy and General Counsel for Safe Kids Worldwide. It is my pleasure to testify before the House Commerce, Trade and Consumer Protection Subcommittee today. Mr. Chairman and Congressman Stearns, thank you for allowing me to address the important topic of children's product safety.

**I. History of Safe Kids Worldwide**

Safe Kids Worldwide is the first and only international organization dedicated solely to addressing an often under recognized problem: ***More children ages 14 and under in the U.S. are being killed by what people call "accidents" (motor vehicle crashes, fires, drownings and other injuries) than by any other cause.*** Formerly known as the National SAFE KIDS Campaign, Safe Kids Worldwide unites more than 450 coalitions in 16 countries, bringing together health and safety experts, educators, corporations, foundations, policymakers and volunteers to educate and protect families against the dangers of accidental injuries.

Founded in 1987 by the Children's National Medical Center and with support from Johnson & Johnson, Safe Kids Worldwide relies on developing injury prevention strategies that work in the real world – conducting public outreach and awareness campaigns, organizing and implementing hands-on grassroots events, and working to make injury prevention a public policy priority.

The ongoing work of Safe Kids coalitions reaching out to local communities with injury prevention messages has contributed to the more than 40 percent decline in the childhood unintentional injury death rate during the past 15 years. However, with more children dying from accidental injury than from cancer, heart disease and birth defects, Safe Kids Worldwide remains committed to reducing unintentional injury by implementing prevention strategies and increasing public awareness of the problem and its solutions.

**II. The Problem: Accidental Childhood Injury**

Accidental injuries are a leading cause of death for all Americans, regardless of age, race, gender, or economic status. Annually, an average of 27,100 deaths and over 33.1 million injuries are related to consumer products. Unfortunately, children make up a large portion of these tragic numbers. Each year, more children ages 14 and under die from unintentional injuries than from

all childhood diseases combined. More than 5,300 children ages 0 – 14 die and there are over 6 million injuries serious enough to require medical care due to unintentional injury.

### **III. Federal Child Safety Product Legislation**

Safe Kids is quite pleased that the Subcommittee has chosen to address the issue of child safety so early in the 110<sup>th</sup> Congress. We believe it is a comment on its commitment to children and its recognition that accidental injury and death to children happens far too often and, more importantly, that something can be done about it. Not coincidentally, there is a lot that can be done. Over the past 13 years, there has been a backlog of consumer product legislation that has languished in Congress, and several are worthy of attention and action:

#### **A. Pool and Spa Safety for Children: *Pool and Spa Safety Act* (H.R. 1721)**

##### **1. The Problem: Accidental Childhood Drowning in Pools and Spas**

While water recreation provides hours of enjoyment and exercise for children, water and children can be a deadly mix when an unsafe environment or inadequate supervision is also present. In the United States, drowning remains the second leading cause of accidental injury-related death among children ages 1 to 14. In 2004, 761 children ages 14 and under died as a result of accidental drowning and in 2005, approximately 3,019 children in this age group were treated in emergency rooms for near-drowning, which often results in lifetime injuries, including permanent brain injuries. Of these drowning deaths, an estimated forty percent occur in pools. The vast majority of these deaths were due to children having unfettered or very easy access to pools/spas or as a result of adults not properly supervising children who were in the pool with permission.

Swimming pools and spas also present hidden dangers for children (and adult bathers and swimmers): the risk of drain entrapment. Entrapment occurs when part of a child becomes attached to a drain because of the powerful suction of a pool or spa's water circulation system. This happens much the same way one's hand might get stuck to the hose end of a vacuum cleaner. Young children are captivated with the suction created by a pool or spa circulation system, often playing in the suction path to feel the powerful pull of the water. This is often referred to as an "attractive nuisance". That "nuisance" is magnified by the lack of awareness by most consumers (especially children) and the aging of pools in this country. Death or serious injury can occur when the force of the suction overpowers the child's ability to disengage from the drain and rise to the surface of the water. Often, the strength of an adult is still not enough to remove a child trapped by a pool or spa's drainage system. This risk, unlike the more common form of drowning described above, has nothing to do with the lack of proper adult supervision, but has everything to do with engineering flaws in the way pools are built and maintained.

There are at least five different types of suction entrapment:

1. Body Entrapment – where a suction of the torso becomes entrapped;
2. Limb Entrapment – where an arm or leg is pulled into an open drain pipe;
3. Hair Entanglement/Entrapment – where hair is pulled in and wrapped around the grate of a drain cover;
4. Mechanical Entrapment – where jewelry or part of a bathing suit becomes caught in the drain or grate; and
5. Evisceration – where the victim's buttocks comes in contact with the pool suction outlet and he/she is disemboweled.

Each of these “entrapments” almost always results in death or permanent serious injury.

From 1985 to 2004, records show that at least 33 children ages 14 and under died as a result of pool and spa entrapment, and nearly 100 children were seriously injured. Entrapment deaths can also occur when a child's hair or swimsuit gets tangled in the drain or on an underwater object, such as a ladder. Forty-one percent of the deaths were hair-related entrapments. Fifty-two percent of these fatalities occurred in spas or hot tubs, thirty-nine percent in swimming pools, and nine percent in combination pool/spas.

However, according to the U.S. Consumer Product Safety Commission (CPSC) and Safe Kids Worldwide, the number of entrapment deaths could be much higher than reported. Due to the fact that entrapment is a little-known risk for drowning, it is possible that many drowning deaths have not been classified as entrapment and that the number of deaths is probably higher than reported. For example, in the case of Nancy Baker's daughter and former Secretary of State James Baker's granddaughter, Graeme's cause of death was listed as a “drowning” only with no mention of the mechanism of the fatality on the death certificate. Safe Kids believes that this type of incomplete characterization happens more often than not, and therefore, the actual incidences of entrapment/entanglement/evisceration is much higher than reported.

As pools and spas become more common among consumers and existing pools and spas age and require maintenance, the potential risk of injuries and deaths from entrapment increases. The number of residential swimming pool owners increased by approximately 600,000 from 2002 to 2004, and the number of residential spa owners increased by about 800,000 over the same period.

Drowning, in all its forms, is usually quick and silent. A child will lose consciousness two minutes after submersion, with irreversible brain damage occurring within four to six minutes. The majority of children who survive without neurological consequences are discovered within two minutes of submersion, and most children who die are found after 10 minutes.

For children who do survive, the consequences of near-drowning can be devastating. As many as 20 percent of near-drowning survivors suffer severe, permanent neurological disability, the effects of which often result in long-lasting psychological and emotional trauma for the child, his or her family and their community. Near-drownings also take a tremendous financial toll on affected families and society as a whole. Typical medical costs for a near-drowning victim can range from \$75,000 for initial treatment to \$180,000 a year for long-term care. The total cost of a single near-drowning that results in brain injury can be more than \$4.5 million.

## **2. The Solution: Layers of Protection and Active Supervision**

As a result of these alarming statistics, Safe Kids has promoted two primary ways to prevent pool and spa drownings and entrapments: safety devices to guard the pool and prevent entrapment, and active supervision.

### **a. Use of Environmental Safety Devices: Layers of Protection**

#### **i. Four-Sided/Isolation Fencing**

One of the most effective ways to reduce child drownings in residential pools is to construct and maintain barriers to prevent young children from gaining unsupervised access to pools. Studies show that installation and proper use of four-sided isolation fencing could prevent 50 to 90 percent of residential pool drowning and near-drowning incidents among children. Isolation fencing (enclosing the pool completely) is more effective than perimeter fencing (enclosing property and the pool) because it prevents children from accessing the pool area through the house. If the house is part of the barrier, the doors and windows leading to the pool should be protected, at the very least, by an alarm or a powered safety cover for the pool. Safe Kids also recommends that pool fences have a secure, self-closing, self-latching gate and also isolate the pool from the residence. The CPSC has crafted suggested recommendations, entitled *Safety Barrier Guidelines for Home Pools*, which details specifically how pool owners and pool installation companies should construct fencing to best prevent the unsupervised access to pools by children. Some localities and a few states have used these guidelines as a basis for their own laws.

#### **ii. Anti-Entrapment Drain Covers**

In addition to the barriers to the water, there are other devices designed specifically to protect against entrapment. Another layer of protection involves the installation of anti-entrapment drain covers. Anti-entrapment drain covers are recommended to help prevent the suction from drawing the body or hair into the drain. Anti-entrapment drain covers are not flush to the bottom of the pool or spa, like many dangerous grates and outlet covers in pools/spas today. Anti-entrapment covers are drain fittings that are

specifically designed to prevent the circular or swirling motion of the water that tends to form a vacuum or suction and draws hair or the body into the drain pipe. Safe Kids recommends that pool owners (both private owners and commercial operators) have their pools/spas inspected by pool maintenance professionals for dangerous or broken covers and have them replaced with safer covers before pools/spas are used for the summer. These drain covers have a retail price of approximately \$30 – \$75.

### **iii. Safety Vacuum Release Systems**

Safety vacuum release systems (SVRS) are intended to detect any blockage of a drain, automatically and immediately shutting off the suction to prevent entrapment. This immediate shut off feature eliminates the need for a witness to an entrapment, usually a panicked family member, from searching around for the on/off switch to turn off the pool pump. The search costs precious seconds and usually by the time the switch is found, it is too late. These safety devices have a suggested retail price between \$375 – \$800.

### **iv. Dual Drains**

To ensure a safe environment, Safe Kids advises pool and spa owners to install multiple drains, not just one, in order to decrease the amount of suction at the drain site. Although this safety adaptation is admittedly costly and labor intensive for existing pools since the bottom of the pool would have to be dug up, this safety feature should be a part of the construction for all new pools and spas being built.

### **v. Pool Alarms**

Additionally, a common cause of drowning occurs when children have an accidental or unsupervised entry into a pool. Fencing is a deterrent to such entries, but they cannot save children who have found their way into the pool without adult supervision. If a child has overcome the other physical barriers in place and reached the pool, pool alarms represent a last line of defense that can provide rapid detection of unauthorized, unsupervised, or accidental entry into the water. Like many safety mechanisms, technological advancements have significantly improved the reliability and efficacy of pool alarms. Today's pool alarms use advanced signal detection to detect slight changes in water pressure, automatically reset themselves even when the pool owner forgets to arm them, and have reduced or eliminated the challenges of a high false alarm rates. A pool alarm is a reliable and affordable safety device that can help reduce the number of childhood drownings that occur in pools.

Safe Kids also believes that pool service companies, and in particular, their technicians, need to be better educated about these “layers of protection” and

should more regularly inform pool owners and operators about these important environmental changes and safety devices. The pool service visit each May should not only include preparing the pool for the summer's activities, but should also include an inspection for these hidden hazards and installation of the appropriate layers of protection.

#### **b. Active Supervision of Children**

In addition to environmental precautions, parents and caregivers must also actively supervise children whenever water is present. Unfortunately, many parents do not realize the importance of active supervision around water at all times. Active supervision means that a parent or caregiver is giving undivided attention to the child and is close enough to help the child in case of emergency.

In a previous Safe Kids' study, research revealed that nine of out of ten children who drowned were being supervised. Our 2004 study, *Clear Danger: A National Study of Childhood Drowning and Related Attitudes and Behaviors*, showed that in 88 percent of drowning cases reviewed, the victim was under some form of supervision when he or she drowned – in most cases, being supervised by a family member.

In the report survey, nearly all parents (94 percent) reported that they always actively supervise their children while swimming. However, deeper examination revealed that parents participated in a variety of distracting behaviors while supervising, including talking to others (38 percent), reading (18 percent), eating (17 percent), talking on the phone (11 percent) and even closing their eyes and relaxing (4 percent).

#### **c. Safe Kids' Support of the *Pool and Spa Safety Act***

Safe Kids knows that installation of the layers of protection will go a long way to protecting children from the potential dangers of residential and publicly-operated pools and spas. Ten states have enacted residential pool fencing laws and five states have laws designed to prevent entrapment-related incidents for residential swimming pools, but no state has a comprehensive pool safety law on its books. Accordingly, Safe Kids strongly supports the enactment of the *Pool and Spa Safety Act* and applauds Congresswoman Debbie Wasserman Schultz (D-FL) for her leadership in introducing this legislation. We also commend former Secretary of State James Baker and Nancy Baker for sharing their personal story about the loss of Virginia Graeme Baker and for their advocacy efforts in support of this important piece of legislation.

The *Pool and Spa Safety Act* was narrowly defeated in the 109<sup>th</sup> Congress. The legislation is intended to increase the safety of swimming pools and spas by

motivating states to pass laws that incorporate the layers of protection in order to help prevent drowning, entrapment and hair entanglements. If enacted, the legislation would provide incentive grants to states that call for all swimming pools and spas to have the following layers of protection:

- A wall, fence or barrier that entirely encloses the pool;
- Self-closing and self-latching gates for any walls, fences or barriers;
- A drain system that contains two suction outlets per pump (for new pools only);
- A safety suction outlet drain cover that meets the CPSC's guidelines;
- A pool alarm; and
- A safety vacuum release system.

Congressional incentive grants to encourage states to pass safety legislation are not a new concept. Congress has used this mechanism often to promote state transportation safety laws, some of which are included in the recently passed SAFETEA-LU federal highway law. Safe Kids believes that the *Pool and Spa Safety Act* could do for pool safety what incentive grants have done for booster seat child occupant protection laws, primary enforcement safety belt laws, .08 drunk driving laws and open container prohibition laws.

The bill also has two important industry and consumer awareness/education components. First, the bill would require states to use at least 50 percent of the awarded grant to hire and train personnel to properly enforce the law, and to educate pool construction/installation companies, pool service companies and consumers about the new law and about drowning prevention tips.

In addition, passage of the legislation would enable a national public education program on pool and spa safety to be implemented through the CPSC. The need for this type of consumer awareness program is overwhelming. Safe Kids, in its most recent research, has found that the vast majority of American pool and spa owners did not install many of the recommended devices in and around their pools and spas. Swimming pool owners would be targeted with information on ways to prevent drowning and entrapment, and educational materials would be designed and disseminated through pool manufacturers, pool service companies and pool supply retail outlets.

The bill would also provide for a federal safety standard for anti-entrapment drain covers in order to ensure that all drain covers available in the marketplace would conform to certain safety criteria.

We encourage this Subcommittee to support the *Pool and Spa Safety Act* before another summer of active water recreation passes by.

**B. Poison Prevention: *Children's Gasoline Burn Prevention Act* (H.R. 814)**

According to the CPSC, approximately 1,270 children under age 5 are treated in hospital emergency rooms for injuries resulting from unsecured gas containers. Safe Kids believes that the passage of the *Children's Gasoline Burn Prevention Act* introduced by Representative Dennis Moore (D-KS), would help protect children from these types of injuries associated with non-child resistant gasoline containers.

Child resistant packaging has been a proven effective intervention to keep kids safe from dangerous medications. The CPSC estimates that child resistant packaging for aspirin and oral prescription medicine saved the lives of about 700 children since the requirements went into effect in the early 1970s.

Child resistant packaging is needed for other household chemicals, such as gasoline. This legislation is critical because currently there are no mandatory CPSC standards in place that address portable gasoline containers. The 1973 Poison Prevention Act does not apply to childproofing gasoline containers because they are sold empty – even though the containers are designed to (and always do) store poisonous, highly flammable liquids. The designed purpose of the containers, coupled with the fact that nearly 45 percent of household garages are used to store gasoline, highlight the need for child resistant caps on these products. Passage of the *Children's Gasoline Burn Prevention Act* would require the CPSC to implement this standard and help prevent these injuries from occurring in the first place.

**C. Product Recall Effectiveness: *Danny Keysar Child Product Safety Notification Act* (H.R. 1699)**

The *Danny Keysar Child Product Safety Notification Act* (H.R. 1699), sponsored by Representative Jan Schakowsky (D-IL), would direct the CPSC to require certain manufacturers to provide consumer product registration cards in order to help facilitate the recall process. Safe Kids believes that recall effectiveness would be enhanced if at least two types of products had a registration card requirement:

**1. Items Intimately Interwoven in a Child's Daily Life**

In its present form, the *Danny Keysar Child Product Safety Notification Act* includes items such as cribs, bunk beds, strollers, high chairs, baby walkers, changing tables, and play yards – products that are intimately interwoven in a child's daily life. These types of consumer products have special characteristics, in that a child often interacts with them for a substantial period of time. Additionally, many of these products are designed by intent or by practice to allow for a child to be left unattended for several moments or for an even longer duration. If the CPSC were to determine that one of these products posed an

unreasonable risk to the child, and subsequently required a recall, Safe Kids believes that it would be particularly important to notify consumers as quickly as possible. For these types of products, registration cards would assist in that process.

## **2. Products with a Safety Purpose**

Safe Kids believes that, along with improving recall effectiveness rates, some products are of such special nature and purpose, registration cards should be considered for them. Mandatory registration cards may have some value when attached to products that are designed to fulfill a safety purpose, such as baby monitors, safety latches, baby gates, catcher's masks and other sports safety equipment, smoke alarms, and carbon monoxide detectors. Consumers purchase these products to serve a preventive role in order to protect their children and families from deaths and injuries. If the CPSC determines that one of these products is not adequately fulfilling that safety purpose, it is critically important to remove that product from homes as soon as possible. We cannot have consumers relying on a safety product when the product itself fails to fulfill its intended purpose. Again, in those circumstances, it would be particularly important to notify consumers quickly about the defect. We recommend that these types of safety products be included in H.R. 1699.

### **D. Furniture Tipover Prevention: *Katie Elise and Meghan Agnes Act***

The *Katie Elise and Meghan Agnes Act*, introduced by Representative Allyson Schwartz (D-PA) in the 109<sup>th</sup> congressional session, would protect children from the dangers involved with unstable furniture and appliances. CPSC data indicates that each year approximately 8,000 to 10,000 victims are treated in emergency rooms for injuries, and six people die as a result of furniture tipping over. The majority of these injuries and deaths are to children.

The legislation, if passed, would direct the CPSC to issue regulations concerning the safety and labeling of certain furniture and electronic appliances that the CPSC determines poses a substantial hazard of tipping, due to its weight, height, stability or other design features. This would include requiring anchoring devices and instructions in the packaging of furniture that does not meet the stability standard. Warning labels would also alert consumers at the point of purchase that certain pieces of furniture or appliances have the potential for tipover. If this bill is introduced again in the 110<sup>th</sup> Congress, Safe Kids encourages this Subcommittee to support this measure.

#### **E. Amusement Park Safety: National Amusement Park Safety Act**

Safe Kids urges Congress to amend the Consumer Product Safety Act to include fixed site amusement park rides as a consumer product under CPSC jurisdiction. In its present form, Section 3 of the Consumer Product Safety Act defines a consumer product as, among other things, “any mechanical device which carries or convey passengers...for the purpose of giving its passengers amusement...*and which is not permanently fixed to a site.*” (Emphasis added.) This definition is commonly referred to as the “roller coaster loophole.”

Safe Kids supports Congressman Ed Markey’s *National Amusement Park Ride Safety Act* (soon be introduced in the 110<sup>th</sup> Congress), which among other things, closes the “roller coaster loophole.” This loophole prevents the CPSC from investigating any amusement park ride accident in any park in America. Instead, all authority has fallen by default to the states – many of which do not have the resources to oversee these activities – leaving regulation largely to the parks themselves. However, even if state-by-state regulation were adequate, the fact that no one with 50-state authority has the ability to investigate deaths or serious injuries in amusement parks means:

- Accidents in one state may be repeated on similar rides in other states – resulting in possible tragedies that could have been prevented but for the loophole;
- Injury and accident trends are not identified because there is no independent government source of data; and
- When safety repairs are ordered by one state, they are not required in any other state.

The legislation would restore fixed site amusement park ride jurisdiction to the CPSC (jurisdiction that was removed from the Commission in 1981). The bill would allow the CPSC to investigate accidents; develop an enforced action plan to correct problems if found; and act as a national clearinghouse for incident and defect data.

If Congress chooses to restore this jurisdiction to the CPSC, Safe Kids urges the Subcommittee to authorize and Congress to appropriate adequate funding to the agency to carry out this new policing effort.

#### **IV. Suggested Congressional Considerations**

Safe Kids believes that both changes to its authorizing/enabling statutes and an overall increase to its budget will help the Commission serve its critical mission of protecting children and other consumers. Accordingly, Safe Kids offers the following points for Congress to consider.

## **A. CPSC Budget Constraints Limiting the Agency's Ability to Fulfill its Mission**

The CPSC is an agency with a huge responsibility and a very large jurisdiction. This agency monitors the safety of over 15,000 product categories – including kitchen appliances, sporting equipment, safety devices, home furnishings and art materials – just to name a few. The CPSC must regulate these products, recall them when necessary, educate the public about safe use and behavior, and stay current on new injury product trends. Unfortunately, President Bush has requested a FY 2008 budget amount for the agency that is the equivalent of a budget cut. It certainly prevents the Commission from serving its critical mission, and prevents it from improving the way it protects consumers and children from dangerous products.

President Bush's Fiscal Year 2008 budget includes an appropriation of \$63,250,000 for the CPSC, an increase of \$880,000 from Fiscal Year 2007. Although Safe Kids recognizes that this is an apparent increase over last year, in effect, and given this agency's recent inadequate budgets, we believe additional funds are needed given the CPSC's broad jurisdiction over so many consumer products. Additional funding would help the agency better fulfill its broad mission (i.e., better marketplace policing, more effective consumer education, improved testing of products).

In addition, the President's budget includes a request for 401 full-time employees. This staffing level would be the lowest ever for the Commission. Salaries represent the largest portion of the CPSC's budget. However, the CPSC has gradually had their staffing levels reduced over the years due to budget constraints. This has resulted in fewer and fewer CPSC staff members to carry out the agency's increasing responsibilities to keep children and families safe from defective and hazardous products. Additionally and significantly, the President's request for the CPSC is much less than the proposed \$66.858 million request that the agency itself voted for in the fall of 2006. At that time, the CPSC voted unanimously to approve the CPSC Executive Director's recommendation to request a \$4.468 million increase over the President's Fiscal Year 2007 request. The Executive Director's recommendation also included 420 full-time staff positions which she felt was needed to at least continue the Commission's core functions. Safe Kids believes that the Commission itself knows best its budgetary needs and the President should have (and Congress should) give great deference to the CPSC's own assessment and budget needs. Congress now has the opportunity to do just that. Safe Kids hopes that the Subcommittee supports increasing the President's budget request so that the Commission not only keeps pace with their current duties, but is able to expand their activities as needed.

In March, the Senate approved an additional \$10 million increase for the CPSC's budget. We hope this Subcommittee also supports this increase. The CPSC does so much with so little and over the years has established and implemented programs and initiatives that work, and with an infusion of additional resources, it could be much more effective. For example:

## **1. Data Collection: NEISS and the Safety Hotline**

The CPSC maintains the only federal data system specifically designed to collect information on consumer product-related injuries. The National Electronic Injury Surveillance System (NEISS) allows the CPSC to identify hazards and serves as the basis for preventative measures and education programs. Safe Kids recommends that a portion of any increase in funding be used to improve this unique data collection tool. Specifically, the CPSC should add more hospitals, especially children's hospitals, to the approximately 100 institutions currently in the database. This would result in more reliable data and would improve national estimates of injury incidence. The necessary expansion of this data collection technique would, of course, need additional funding. Congress should provide it.

The CPSC "Safety Hotline" provides a vital link between government and America's consumers. This toll-free hotline permits individuals to: 1) report an unsafe product; 2) report a product-related injury; 3) find out whether a product has been recalled; 4) learn how to return a recalled product or arrange for its repair; 5) receive information on what to look for when buying a consumer product; and 6) obtain information on how to safely use a consumer product. Safe Kids' network of over 300 state and local coalitions, as well as other community-based organizations, utilize the hotline on a regular basis to both report potentially dangerous products and to collect information on unsafe products. Clearly, the hotline is an invaluable resource to groups like Safe Kids that are in the business of communicating critical safety messages to the general public, but we are sure that the hotline itself is ready for technological updates that will help keep it on the cutting edge.

The CPSC needs adequate funding so that it can continue and improve upon these important services through upgrades of its critical information technology systems.

## **2. Market Oversight**

The CPSC has the mandate to ensure that companies which produce or sell consumer products comply with the laws, regulations and standards intended to protect consumers and children. Significantly, since 1973, the Commission's use of its recall authority has resulted in the initiation of thousands of recalls or other corrective actions involving millions of products. These recalls involved a variety of products, including baby rattles, pacifiers, cribs, flammable clothing and bike helmets. Over the years, however, and due to budget restraints, the CPSC may not be able to properly police the marketplace for dangerous products. By necessity, the CPSC is recalling more products than ever. It is receiving more Section 15 reports than at any other time in its history, especially from some of our nation's largest retailers. This increased activity demands appropriate resources – resources that the agency right now does not have.

The agency's field and compliance staff, in our view, are stretched to the limits. These CPSC departments, at their present staffing levels, will not be able to keep up with this increased activity and safety will suffer. For instance, more and more products are now being sold on the Internet. It is the CPSC's responsibility to police this electronic marketplace for recalled, dangerous products being sold online after a recall has been announced. Presently, CPSC Investigators conduct surveillance only on weekends and in their spare time. This is not nearly enough given the huge expansion of this type of commerce. In addition, more and more products are entering the marketplace through imports, especially from China. This influx of products presents the CPSC with the challenge of increased custom product import oversight. Congress should provide the resources in order to allow the CPSC to better police the consumer product marketplace in all its forms.

### **3. Public Education**

The CPSC uses a wide range of tools to spread many important safety messages that are critical to the prevention of product-related injuries. Each time the CPSC educates a parent, an adult or a child about the proper use of a product, it is helping to create a safer environment for America's children. Safe Kids applauds the CPSC for its widespread and effective Neighborhood Safety Network initiative, which provides timely and useful public education materials to our organization and the public at large. Congress should help the CPSC continue and expand upon this role of providing public education.

### **4. CPSC Testing Laboratories**

Several years ago, Safe Kids staff toured the CPSC testing lab located in Gaithersburg, Maryland. The CPSC, among other things, uses this lab to test thousands of consumer products to ensure that they comply with existing voluntary or mandatory standards, or to determine whether or not they pose an unreasonable risk of injury to the American public. Safe Kids staff was impressed by the commitment and expertise of CPSC lab personnel, but was surprised by the quality of the lab's conditions. The CPSC to this day, while somehow fulfilling their mission, has done so with less than adequate technical facilities. We believe that the CPSC should have a lab that, at the very least, competes with those found in the private sector and that Congress should provide the funds necessary to upgrade the facility.

## **B. Allowing Election of Remedy Under Section 15 Does Not Necessarily Serve the Public Interest**

Once the Commission determines that a product distributed in commerce presents a substantial hazard and that remedial action is required to serve the public interest under

Section 15 of the Consumer Product Safety Act, the CPSC may order the manufacturer of the dangerous product to elect (at the product manufacturer's discretion) to either:

- A. Bring the merchandise into conformity with requirements of the applicable consumer product safety rule; or
- B. Replace the product with a like or equivalent product; or
- C. Refund the purchase price (less a reasonable allowance for use).

*(Consumer Product Safety Act, Section 15d)*

This discretionary election may not always serve the public interest. For instance, if the CPSC is recalling a \$75 toaster that poses a serious electrocution or fire and burn hazard, the manufacturer, once ordered to remedy, may elect to refund the purchase price less a reasonable allowance for use. The refund on a toaster that has been in the marketplace for five years may have a refund value of \$10. This refund may not be a motivating enough factor to encourage the consumer to remove the dangerous product from their household. In this case, the public may be better served by a different remedy – such as receiving a replacement item that is of similar quality or having the recalled product repaired. Safe Kids believes that CPSC compliance officers should ultimately decide what constitutes an appropriate remedy given the totality of the circumstances. Congress should consider a technical change to Section 15 of the enabling statute that empowers the CPSC to police the manufacturer's elected remedy option.

### **C. Congressional Consideration of Increase of Civil Penalties under the Consumer Product Safety Act**

Safe Kids urges Congress to consider an increase in the civil penalty allowed by the Consumer Product Safety Act. In its present form (under Section 20), any person who knowingly engages in a prohibited act, as outlined in Section 19, is subject to a civil penalty not to exceed approximately \$1.8 million. In some cases, and in particular when larger companies are involved, the \$1.8 million cap may not be enough of an economic deterrent to prevent the company from engaging in an unlawful act. For example, a company that has \$50 million worth of product in the marketplace may be willing to incur the civil penalty instead of reporting a defect or injury as required under Section 15 in hopes of avoiding a recall. Congress should consider increasing the civil cap to an amount that better represents a deterrent. In order to avoid an unduly harsh and unfair penalty, if Congress chooses to increase the cap, consideration could be given for different caps for different companies based on gross revenues. For instance, bigger companies could have bigger caps, and smaller companies could have smaller caps. Alternatively, the cap could also be raised for only the most serious violations of Section 19.

## **V. Conclusion**

Children are especially vulnerable to the dangers posed by hazardous products. They often are unable to recognize and avoid dangerous situations. Safe Kids commends this Subcommittee for convening this important consumer safety hearing and we look forward to working with you on any legislative initiatives and educational efforts designed to protect children from these hazards.